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Supreme Court, U.S.
FILED

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No.

In The
Supreme Court of the United States

October Term, 1996

SCOT A. REINERT,

Petitioner

v.

COMMONWEALTH OF PENNSYLVANIA

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI

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Commonwealth of Pennsylvania	:	In the Superior
	:	Court of
	:	Pennsylvania
	:	
vs.	:	
	:	
Scot A. Reinert,	:	No. 4349
Appellant	:	Philadelphia,
	:	1994

Appeal from the Judgment of Sentence entered November 15, 1994, Court of Common Pleas, Lehigh County, Criminal Division at No. 1128/1991.

BEFORE: JOHNSON, HUDOCK and OLSZEWSKI, JJ.

MEMORANDUM:

Scot A. Reinert appeals from the judgment of sentence imposed following his conviction for first-degree murder. We affirm.

The trial court accurately summarized the facts as follows:

On Sunday afternoon, March 10, 1991, the Allentown Police Department received a call requesting assistance from Charles Ketner, the stepfather of [Reinert]. The police responded to 120 North West Street, Allentown, Lehigh County, Pennsylvania.

Mr. Ketner allowed the police to enter the premises. The police found [Reinert] sitting on the living room floor with dried blood on his clothing and apparent injuries. No one else appeared to be on the first floor.

Emergency Medical Services were called and began treatment of [Reinert]. The medical personnel assisted [Reinert] to the ambulance, at which point, unsolicited,

[Reinert] told them, "I stabbed him with a butcher knife, then I did myself." EMT Snyder, who testified at trial, observed [Reinert] to be coherent and aware at the time the statement was made.

Two Allentown patrolmen accompanied [Reinert] on the ride to the hospital and administered Miranda warnings to [Reinert]. [Reinert] then voluntarily stated, "I stabbed him. I think I killed him."

After arriving at the hospital, [Reinert] spoke with two of the emergency room nurses about what had transpired at the house.

Meanwhile, as [Reinert] was being transported, admitted, and treated, the police secured the crime scene. The police found the victim's body on the third floor, next to the bed. He had been stabbed multiple times.

The police memorialized the scene and proceeded through the house. Numerous items were seized, including the murder weapon and items of clothing. All of the items seized during this initial search were in plain view. Subsequent searches were conducted pursuant to a search warrant.

At the hospital, [Reinert] had surgery to close his wounds. Following surgery, [Reinert]'s doctor judged him to be in stable condition. At that point, [Reinert] was again given Miranda warnings by Detective Joseph Stauffer and Detective Glen Granitz of the Allentown Police Department. Preliminary questions were asked to determine that [Reinert] was coherent and understood the implication of his waiver of Miranda rights.

[Reinert] subsequently gave a statement to the detectives. He indicated that he had lived in an intimate relationship with Sean Brady for five years. On their way back from New York City the previous Friday evening, they had an argument. Upon returning to their home, Sean went up to the third floor bedroom and [Reinert] stayed

downstairs. At some point later that night, [Reinert] picked up a butcher knife, went upstairs, and stabbed Sean. [Reinert] could not recall how many times he had stabbed Sean with the butcher knife.

Testimony revealed that after stabbing Sean, [Reinert] left the bedroom and locked himself in the downstairs bathroom. There he cut his writs and stabbed himself in the abdomen in an apparent suicide attempt. [Reinert] then drifted in and out of consciousness for a period of time. At some point, he exited the bathroom, wrapped his cuts and left the house. He went to a drugstore, where he purchased sleeping pills, and returned home. [Reinert] took some or all of the pills he bought and remained in the home with the victim's body still upstairs.

[Reinert's] mother called the house on Sunday and spoke with her son. Worried by the tone of his voice Mrs. Ketner went to the house with her husband. Upon arriving, the Ketners called the police.

On or about March 10, 1991, [Reinert] was arrested and charged with criminal homicide. . . .

Trial Court Opinion, dated November 15, 1994, at 1-4.

Reinert filed a motion to suppress both the evidence seized without a warrant and his statements to the police and medical staff. The suppression judge, the Honorable Carol K. McGinley, denied this motion. See Opinion, dated September 13, 1991 (Opinion I). Following trial, a jury convicted Reinert of first-degree murder. Reinert filed post-verdict motions which were denied. See Opinion, dated November 15, 1994 (Opinion II). The trial court then sentenced Reinert to a term of life imprisonment. This appeal followed.

For purposes of review, we have renumbered and consolidated Reinert's issues. On appeal, Reinert contends, in essence, that (1) trial counsel was ineffective for failing to (a) call certain witnesses, (b) call one of trial counsel to testify at the suppression hearing, (c) renew Reinert's motion to suppress, (d) inform Reinert of his right

to testify, (e) call an expert to testify about the effects of Prozac, (f) propose proper jury charges regarding the voluntariness of his statements and the doctrine of homicide by misadventure, (g) object to the trial court's jury instructions on character and circumstantial evidence, and for (h) requesting the removal of a juror without Reinert's consent and outside his presence. In addition, Reinert contends that the trial court erred in (2) failing to comply with Pa.R.Crim.P. 323(i); (3) refusing to charge the jury on certain matters; (4) dismissing a juror outside his presence; (5) refusing to allow certain defense exhibits to go out with the jury during its deliberations; (6) denying his motion to suppress certain statements and evidence; (7) declaring all non-expert testimony concerning the victim's use of the drug Prozac inadmissible; (8) refusing to admit a 911 call into evidence; (9) ordering disclosure of attorney work product; (10) allowing the prosecutor to make improper remarks during the closing argument; (11) permitting the Commonwealth's exhibits to go to the jury during its deliberations; (12) granting the Commonwealth's motion to strike and denying the defendant's motion to strike; and (13) permitting the jury to be "life qualified."

First, Reinert contends that his trial counsel was ineffective for various reasons. In order to prove that his counsel was ineffective, Reinert must establish: "1) that the underlying claim is of arguable merit; 2) that counsel's performance was unreasonable; and, 3) that counsel's ineffectiveness prejudiced defendant." Commonwealth v. Williams, 537 Pa. 1, 27, 640 A.2d 1251, 1264 (1994). Further, "[a]n evidentiary hearing is not mandated in every case that ineffectiveness of counsel is raised." Id.

Reinert argues that counsel was ineffective for failing to call a certain witness. Specifically, he contends that counsel was ineffective for failing to call Officer Mertz at the suppression hearing.

In order to establish that counsel was ineffective for failing to call witnesses, Reinert must "establish that: (1) the witness existed; (2) such witnesses were available to testify for the defense; (3) counsel knew of, or should have known of the existence of the witnesses; (4) the witnesses were willing to testify for the defense; and (5) the absence

of the testimony of such witnesses was so prejudicial as to have denied him a fair trial." Commonwealth v. Horton, 434 Pa.Super. 478, 486-87, 644 A.2d 181, 185 (1994). In addition, "counsel will not be deemed ineffective for failing to call witnesses whose testimony is merely cumulative of that of other witnesses." Commonwealth v. Spencer, 432 Pa.Super. 631, 640, 639 A.2d 820, 825 (1994).

After hearing testimony, the suppression court concluded that the search conducted by Officer Stauffer was lawful because he was securing the crime scene and performing a protective walkthrough. Reinert contends that Officer Mertz would have testified that he had already secured the crime scene and performed a protective walkthrough, thus making Officer Stauffer's search unlawful and the evidence he seized inadmissible. However, at the suppression hearing both Officers Zimmerman and Lembach testified that they had secured the crime scene and conducted a protective walkthrough before Officer Stauffer. N.T., August 21, 1991, at 33, 48. Because Reinert has failed to establish that Officer Mertz's testimony would have added anything to the testimony of Officers Zimmerman and Lembach, we find that the absence of his testimony was not so prejudicial as to have denied him a fair trial. In addition, Officer Mertz testimony would have been merely cumulative. Thus, we conclude that counsel was not ineffective for failing to present this testimony.

Reinert also argues that counsel was ineffective for failing to call one of trial counsel at the suppression hearing to testify about his mental state in the hospital. At the suppression hearing, Reinert's mother and step=father, his close personal friend, and a minister all testified as to Reinert's physical and mental state when he was hospitalized. N.T., dated August 20, 1991, at 31-32, 35-38, 44-46, 51-52, 57-61, 68-80. Any further testimony by counsel regarding Reinert's mental state at the hospital would have been cumulative. In addition, Reinert has again failed to show how counsel's failure to testify resulted in prejudice against him. Thus, we conclude that Reinert's claim is without merit.

Reinert contends that trial counsel was ineffective for failing to renew his motion to suppress at trial following the

testimony of Officer Mertz. A court may not reconsider its pretrial suppression ruling unless counsel brings forth new evidence. Pa.R.Crim.P. 323 (J); See also Commonwealth v. Metzer, 430 Pa.Super. 217, 634 A.2d 228 (1993). Reinert baldly asserts that Officer Mertz's testimony at trial produced new evidence that warranted a reconsideration of the court's denial of his motion to suppress. However, Reinert has failed to indicate what alleged new evidence was revealed by that testimony. Because Reinert's underlying claim has no merit, we conclude that counsel was not ineffective for failing to renew the motion to suppress.

Reinert further contends that trial counsel was ineffective for failing to inform him of his right to testify at the suppression hearing. In both his brief to this Court and in his affidavit, Reinert has failed to state with any specificity what his testimony would have been and/or how his testimony would have altered the outcome of the hearing. See Appendix for Appellant at D-1 and D-2. Reinert has failed to establish that his claim has arguable merit, that counsel's actions were unreasonable, or that he suffered prejudice. Thus, we are unable to determine whether counsel was ineffective. William, supra.

Reinert claims that trial counsel was ineffective for failing to call a medical expert to testify at the suppression hearing regarding Reinert's mental condition at the time he made statements to the police and medical staff at the hospital. Specifically, Reinert argues that trial counsel was ineffective for failing to produce such testimony to refute the testimony of police and hospital staff that he was coherent and able to waive his Miranda rights. However, "trial counsel need not introduce expert testimony on his client's behalf if he is able effectively to cross-examine prosecution witnesses and elicit helpful testimony." Commonwealth v. Williams, supra, at 29, 640 A.2d 1265.

After reviewing the record, we find that trial counsel thoroughly cross-examined all of the Commonwealth's witnesses regarding Reinert's mental and physical state at the time he was given Miranda warnings and when he made statements to both the police and the medical staff. N.T., August 20, 1993, at 22-31, 38-45, 58-74, 85-96, 111-20, 122-25, 140-68, 170-76, 181-83, 191-203, August 21, 1991,

at 11-21, 23-27, 83-85. Moreover, we note that the Commonwealth produced overwhelming evidence that Reinert had knowingly and voluntarily waived his Miranda rights. N.T., August 20, 1991, at 11-22, 29, 34-38, 40, 50-55, 76-85, 98-111, 135-40, 187-91; August 21, 1991, at 7-11, 82-84. Thus, we conclude that trial counsel was not ineffective for failing to call medical experts at the suppression hearing. See Williams, supra (counsel was not ineffective for failing to call expert witnesses where he extensively cross-examined police officer doctor regarding their testimony); See also Commonwealth v. Logan, 519 Pa. 607, 549 A.2d 531 (1988) (counsel was not ineffective for failing to employ psychiatric testimony at suppression hearing to demonstrate that defendant's mental illness prevented proper waiver of Miranda rights where evidence indicated defendant was aware of nature of right and consequences of waiver).

Reinert also contends that trial counsel was ineffective for failing to call an expert to testify about the effects of the drug Prozac. St trial, Reinert testified that the stabbing occurred during an altercation in which he was attempting to take a butcher knife away from the victim, who he believed was about to commit suicide. Reinert contends that expert testimony would have established that the victim's use of Prozac may have caused him to develop violent behavior and suicidal tendencies, thus substantiating Reinert's belief that the victim was about to kill himself. "When a defendant claims that some sort of expert testimony should have been introduced at trial, the defendant must articulate what evidence was available and who was willing to offer such evidence." Williams, supra, at 29, 640 A.2d at 1265.

In the present case, Reinert has failed to produce any evidence that there was an expert who was qualified and willing to offer evidence concerning the effects of Prozac at the time of trial. The affidavit of Reinert's medical expert, Dr. Lynn A. Bornfriend, only states that at the time of trial there was concern and discussion in the news about the potential effects of Prozac and her unsupported assertion that "there were many medical experts easily attainable to testify to the effects of and issues surrounding Prozac...."

Affidavit of Dr. Lynn A. Bornfriend, Appendix B-4. Based on the evidence presented, we are unable to conclude that counsel's failure to call a medical expert to testify as to the effects of Prozac was so prejudicial as to have denied Reinert a fair trial. Thus, we conclude that this ineffectiveness claim is without merit.

Finally, Reinert contends that trial counsel was ineffective for failing to propose proper jury charges regarding the voluntariness of his statements and the doctrine of homicide by misadventure; failing to object to the trial court's jury instructions on character and circumstantial evidence; and requesting the removal of a juror without Reinert's consent and outside his presence. We summarily reject all of these contentions because, although Reinert argues that his claims have merit, he has failed to establish that counsel's performance was unreasonable or that counsel's ineffectiveness caused him prejudice. Williams, supra. Thus, we are unable to conclude that counsel was ineffective for failing to propose these jury charges or object to the trial court's jury instructions.

As his second issue, Reinert contends that he is entitled to a new trial because the suppression court failed to comply with Pa.R.Crim.P. 323(i). Specifically, Reinert claims that the suppression court failed to issue findings of fact and conclusions of law with its September 13, 1991 order. However, a review of Judge McGinley's Opinion, dated September 13, 1991, reveals that she set forth both findings of fact and conclusions of law. Thus, we find that this contention is meritless.

Next, Reinert contends that the trial court failed to properly charge the jury on (a) the unreasonable belief aspect

of voluntary manslaughter, (b) the use of less than deadly force to prevent a suicide, (c) circumstantial evidence, and (d) the voluntariness of his statements to the police and medical staff. Any error in the court's instructions to the jury are waived where the appellant failed to object to the instruction when given. Olson v. Washington Country Club, 340 Pa. Super. 168, 489 A.2d 895 (1985). In his brief to this Court, Reinert concedes that trial counsel failed to request the proper instructions on homicide by

misadventure and the voluntariness of his statements to the police and medical staff. Brief for Appellant, at 62, 64. In addition, Reinert concedes that trial counsel failed to object to the trial court's instructions on circumstantial and character evidence. *Id.* at 60-64. Finally, trial counsel stated that she had no objections to the instructions given by the trial court. N.T., supra, at 117-18. Thus, we conclude that these contentions have been waived.

As his fourth issue, Reinert maintains that the trial court improperly granted defense counsel's request to dismiss a juror without this consent or presence. "In order to preserve an issue for review, it must specifically be raised at trial...." Williams, supra at 21, 640 A.2d at 1261. In the present case, we note that it was defense counsel who moved to dismiss this juror. In addition, Reinert has failed to establish that he raised this issue at trial. Further, Reinert has failed to argue that this dismissal was unreasonable or resulted in prejudice. Williams, supra. Thus, we conclude that this contention has been waived.

Next, Reinert claims that the trial court improperly refused to permit the jury to review defense exhibits #8, #24, #25 and #112 during its deliberations. Decisions concerning what exhibits the jury may review during its deliberations are within the sound discretion of the trial court and will not be reversed absent an abuse of the trial court and will not be reversed absent an abuse of discretion. Commonwealth v. Thomas, 372 Pa.Super. 349, 539 A.2d 829 (1988), appeal denied, 520 Pa. 604, 553 A.2d 967 (1988). In the present case, the trial court refused to allow defense exhibit #8 to go out with the jury during its deliberations because it contained notes by defense counsel that referred to unsupported testimony by other witnesses. The trial court also refused to allow defense exhibit #24, a note, to go out with the jury because it contained references to the victim's use of the drug Prozac. Finally, the trial court refused to allow defense exhibit #112 to go out with the jury because it contained hearsay statements by Reinert and his mother. The trial court did allow defense exhibit #25 to go out with the jury and only redacted one sentence, a reference to the victim's use of pills, from the two page document. After reviewing the

contents of these defense exhibits, we conclude that the trial court did not abuse its discretion in refusing to allow them to go out with the jury during deliberations.

In addition, we reject Reinert's contention that he was prejudiced by the fact that white latex gloves were provided to the jury in order to allow them to handle the bloody evidence. Specifically, he claims that potentially, this caused the jury to react with prejudice, and reinforced a negative stereotype attached to homosexuals and concerns over HIV and AIDS. We note that latex gloves are commonly used when handling any blood products, regardless of the amount of blood or the sexual orientation of the source. Thus, Reinert's claim is without merit.

Finally, Reinert contends that the suppression court erred in denying his motion to suppress certain statements and evidence. Reinert also argues that the trial court erred in declaring all non-expert testimony concerning the victim's use of the drug Prozac inadmissible; refusing to admit a 911 call into evidence; ordering disclosure of attorney work product; allowing the prosecutor to make improper remarks during the closing argument; permitting the Commonwealth's exhibits to go to the jury during its deliberations; granting the Commonwealth's motion to strike and denying defendant's motion to strike; and permitting the jury to be "life qualified."

After a review of the record, the briefs of the parties, the applicable law, and the well-reasoned Opinions of the Honorable Carol K. McGinley, it is our determination that there is no merit to Reinert's remaining contentions. Judge McGinley comprehensively discussed and adequately disposed of the question presented. Thus, we affirm issue 6 on the basis of Opinion I, supra, at 5-30.

Judgment of Sentence AFFIRMED.

IN THE COURT OF COMMON PLEAS OF
LEHIGH COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

Commonwealth of Pennsylvania	:	
	:	
vs.	:	No. 1128
	:	of 1991
	:	
Scot A. Reinert,	:	
Defendant	:	

ORDER

NOW, this 15th day of September, 1991, upon consideration of the defendant's Omnibus Pre-Trial Motion and after hearings on August 20 and 21, 1991, and for the reasons stated in the attached Opinion,

IT IS ORDERED that the motion to suppress statements is hereby **DENIED**, and

IT IS FURTHER ORDERED that the motion to suppress evidence is hereby **DENIED**; and

IT IS FURTHER ORDERED that the motion for an individual voir dire is hereby **DENIED**.

BY THE COURT:

_____

CAROL K. McGINLEY

:

IN THE COURT OF COMMON PLEAS
OF LEHIGH COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

Commonwealth of Pennsylvania	:
	:
vs.	: No. 1128
	: of 1991
:	
Scot A. Reinert,	:
Defendant	:

*****

APPEARANCES:

DOUGLAS REICHLEY, Assistant District
Attorney for the Commonwealth

DIANE DICKSON, Esquire
For the Defendant

OMNIBUS PRE-TRIAL MOTIONS TO
SUPPRESS

FINDINGS OF FACT

On Sunday, March 10, 1991, shortly after the noon hour, the Allentown Police Department received a call and responded to 120 North West Street, Alentown, Lehigh County, Pennsylvania. The call came from Charles Ketner, the step-father of the accused. Upon arrival the police were admitted to

the premises by Mr. Ketner.

Upon entering the living room, police observed the defendant sitting on the floor, with apparent injuries from a sharp instrument. The police radioed for Emergency Medical Services. Upon the advice of Mr. Ketner, the police proceeded to the third floor where they observed the body of Sean Brady, dead of apparent stab wounds.

Emergency Medical Services arrived promptly and removed the defendant from the scene to an ambulance and then to Lehigh Valley Hospital Center. Upon the direction of their superior, two Allentown patrolmen accompanied the defendant. As he was being placed in the ambulance, the defendant made certain statements.

Upon arrival at Lehigh Valley Hospital Center, and during and prior to surgery, the defendant also made statements to hospital personnel which were reported to the patrolmen who remained outside of the treatment area upon the instruction of hospital personnel.

Meanwhile, following the transport of the defendant to the Lehigh Valley Hospital Center, Detective Joseph Stauffer and Detective Glen Granitz of the Allentown Police Department arrived at the scene, viewed the body of the victim, memorialized the scene before the body was removed, and proceeded through the house. As they proceeded through the house, Detective Granitz, as "evidence man", seized numerous items, including a butcher knife which appeared to be the weapon used.

Later, at Lehigh Valley Hospital Center, after the patient had resumed consciousness following a laparoscopy under general anesthesia, and with the permission of his attending physician, the defendant was questioned by Detective Stauffer. The defendant was advised of his Miranda reights and then made a statement to Detective Stauffer.

At 11:06, the police returned to the hospital and placed the defendant under arrest.

The defense now seeks to suppress the statements of the defendant, and the use of the evidence seized by the police.

THE STATEMENTS

The scene at 120 North West Street was first discovered by Janet Ketner, the defendant's mother, and her husbanbd, Charles Ketner. On Sunday, March 10, Mrs. Ketner placed a call to Scot Reinert about 11:30 in the morning to inquire about plans which had been made for later in the day. When he answered the phone he sounded confused and said things that did not make sense to Mrs. Ketner. He told her that people were running through the house, people like the KKK, chasing him. He also told her something about a body. When she asked where Sean was, he told her that Sean had gone out with friends for the day. He further told her that he wanted to go to a hospital.

Naturally alarmed by such a conversation, Mrs. Ketner and her husband promptly came to the house. Mr. and Mrs. Ketner let themselves into the house with a key and saw Scot sitting on the floor by the sofa. Mrs. Ketner observed that he looked "strange". After seeing that his injuries were not "too bad", Mrs. Ketner decided to "check out the body thing", went to the third floor and discovered the body of the victim.

Mrs. Ketner also testified that at this initial meeting Scot incorrectly insisted that family members had been there recently.

Charles Ketner also observed the defendant at the initial juncture and noted that his eyes were wide, darting back and forth. He also noted that the defendant was thick-tongued and especially soft spoken. He further testified that the defendant claimed that the police had also been there recently.

Also observing the defendant at the scene were Officers Robert Lembach and Bruce immerman of the Allentown Police Department. Officer Zimmerman was one of the officers who arrived in response to the initial call. Officer Zimmerman

testified that he asked the defendant his age and his phone number, and that the defendant gave appropriate and accurate responses.

Also arriving at the scene in the initial stages was Tim Snyder, the paramedic crew chief of the Emergency Medical Service Unit. He observed the defendant seated on the floor in front of the sofa, apparently in the same position where he had first been discovered by his mother and the police. The defendant was awake, alert and oriented. Mr. Snyder observed, as had others, that the defendant had gash marks on both wrists, which were not actively bleeding.

Mr. Snyder and other paramedics took him to the ambulance in the company of Officers Zimmermand and Robert Lembach. As the defendant was being escorted out of the house, he made an attempt to reach for nearby crutches, which he had been apparently using because of pain in an injured foot.

In the ambulance, paramedic Snyder made a vital signs and physical assessment of the defendant. In addition, he asked the defendant certain questions to determine his orientation, and concluded that he was oriented in three spheres.

Also in the course of the examination Mr. Snyder observed another wound, this one to the stomach area. As is customary, the paramedic asked him what had happened. The defendant responded "I stabbed him".

At that point Officer Zimmerman advised the defendant of his Miranda rights, and the defendant indicated that he understood his rights and that he wished to make the statement. Officer Zimmerman then asked him what had happened and the defendant repeated his statement that he had stabbed the victim with a butcher knife and then "did myself".

The defendant remained conscious, alert and oriented throughout his transport to the hospital. No

medication was administered to him while in the care of the Emergency Medical Service Unit.

Once at the hospital the defendant was treated in the emergency room, and was under the care of nurses Thomas Gavin and Patricia Lombardo. In the course of that treatment the medical personnel asked him questions, both to obtain information and to determine the defendant's physical and mental condition. During this period of time the only medication administered to the defendant was an antibiotic. He remained alert and coherent. He responded to questions concerning allergies to medication and to the approximate time of his most recent tetanus inoculation. He indicated he was allergic to penicillin. Ms. Lombardo observed that his blood pressure was stable, that his pulse was providing him with adequate oxygenation to the brain, and she performed the Glasgow coma score to determine his level of consciousness. In all categories, the defendant received the highest possible score.

Because of the nature of some of the injuries to the defendant, i.e. slashed wrists, Nurse Lombardo asked questions to determine his mental state in the event that close supervision would be required to prevent the defendant from attempting to harm himself. She asked him whether he had inflicted the wounds on himself. He replied "Well, ... Some".

The substances administered to the patient thus far in the course of his treatment were non-sedating and non-narcotic, and no medical personnel noticed a change in the defendant's mental perception or clarity following the administration of any substances.

The defendant's medical chart contained later indications that the defendant was allergic to penicillin, codeine and sulfa.

The defendant was in surgery from approximately 1:00 P.M. to 3:00 P.M. He was returned to the Shock Trauma Unit from the recovery

room at approximately 2:05 P.M.

At 7:47 P.M. Detective Stauffer arrived at the hospital with Detective Granitz. After speaking to the attending physician, Dr. Homayoun Hashemi, the detectives proceeded to interview the patient. The questioning began at least five hours after the defendant's surgery had been completed.

Detective Stauffer determined that the patient was conscious and oriented. He asked him his date of birth and his social security number, both of which were later verified as accurate. he asked him other questions to determine whether or not the defendant was aware of his surroundings and received satisfactory answers.

After determining that the defendant was able to be responsive, Detective Stauffer advised him of his rights, following which the defendant said he understood his rights and he agreed to speak with the police. Detective Granitz also asked questions to determine the capacity of the defendant, both at the beginning and the end of the statement.

The defendant, upon questioning by Detective Stauffer, made incriminating statements. In the course of making these statements the defendant was voluble, and volunteered information not specifically sought by Detective Stauffer. The questioning ended at 8:30 P.M.

Dr. Hashemi testified that he had performed a post-operative check at 7:30 P.M. on the defendant, that he had seen that the defendant was awake, coherent, and had stable vital signs. His chart indicated no abnormality with regard to the defendant's ability to answer questions appropriately. Dr. Hashemi also testified that the first administration of medication for pain, specifically morphine, was not administered to the defendant until 10:00 P.M.

Immediately following his statements to the police, the defendant was seen by his family, his close friend Cindy Mellinger, and his mother's minister. All testified that he was extremely soft-

spoken at this time.

THE EVIDENCE

At 12:40 P.M. Detective Stauffer arrived at the scene accompanied by Detective Glen Granitz and shortly thereafter Sergeant Thomas Moyer of the Identification Unit arrived. The officers took pictures of the scene, made physical determinations concerning the body, and obtained formal identification of the body.

The officers then proceeded to go through the house to determine if there were any other persons present who may have been involved in the death of Sean Brady and injury to the defendant. As the police proceeded through the house they observed certain items relevant to the incident, such as blood-stained articles. In the bathroom on the second floor they observed a butcher knife, as well as a razor blade, scissors, and a large amount of blood. These items, as well as clothing and articles stained with blood located throughout the house were picked up by Detective Granitz and seized as evidence. Their possession was noted on an inventory prepared by the police (Exhibit C-9).

All items seized by the police were in plain view.

DISCUSSION OF LAW

STATEMENTS

The defense challenges the voluntariness of the statements given by the defendant. The constitutional principles of the Fifth and Fourteenth Amendments protect the defendant from the use of his own statements against his interests. U.S. Const. Amnends. V. XIV. In order for the Commonwealth to use any statements of the defendant, they must show that there was a voluntary waiver of this rights. Rogers v. Richmond, 365 U.S. 534, 81 S.Ct. 735, 5 L.Ed.2d 760 (1961). The test to be applied in evaluating the voluntariness of the statements is one of the

"totality-of-circumstances." This test is discussed in the case of Commonwealth v. Smith, 470 Pa. 220, 225-26, 368 A.2d 272 (1977), quoting Commonwealth v. Alston, 456 Pa. 128, 133-34, 317 A.2d 241, 243 (1974) as follows:

... the ultimate test for voluntariness is whether the confession is the product of an essentially free and unconstrained choice by its maker. "If it is, if he has willed to confess, it may be used against him. If it is not, if his will has been overborne and his capacity for self-determination critically impaired, the use of his confession offends due process. Rogers v. Richmond, 365 U.S. 534, 81.S.Ct. 735, 5 L.Ed.2d 760. The line of distinction is that at which governing self-direction is lost and compulsion, of whatever nature or however infused, propels or helps to propel the confession." Culombe v. Connecticut, supra, 367 U.S. at 602, 81 S.Ct. at 1879 (1961); see also Commonwealth ex rel. Butler v. Rundle, supra, 429 Pa. at 149, 239 A.2d 430 (1968); Commonwealth v. Eiland, supra, 450 Pa. at 574, 304 A.2d at 476 (1973); Commonwealth v. Banks, 454 Pa. 401, 407, 311 A.2d 576, 579 (1973). An evaluation seeking to determine whether a confession is involuntary because of psychological coercion must consider those elements impinging upon a defendant's will such as: the duration, and the methods of interrogation; the conditions of detention, and the manifest attitude of the police toward the defendant, the defendant's physical and psychological state and all other conditions present which may serve to drain one's powers of resistance to suggestion and undermine his self-determination. See Culombe v. Connecticut, supra, 367 U.S. at 602, 81 S.Ct. at 1860; Commonwealth ex rel. Butler v. Rundle, supra. 429 Pa. at 151, 239 A.2d at 431; Commonwealth v. Eiland ,- supra, - 450 Pa. at 574, 301 A.2d at 654; Commonwealth v. Riggins, supra, 451 Pa. at 525, 304 A.2d at 476; Commonwealth v. Banks, supra, 454 Pa. at 407, 311 A.2d at 579. As we have noted, when the question of voluntariness

passes beyond the realm of physical coercion and into degrees of psychological coercion, most careful attention will be afforded to any facts, circumstances or events tending to overbear the will of the accused. Commonwealth ex rel. Butler v. Rundle, supra, 429 Pa. at 149, 239 A.2d at 430.

The Pennsylvania courts have recognized that physical injury affects the ability of a defendant to give a voluntary, knowing and intelligent statement. Commonwealth ex rel. Gaito v. Maroney, 422 Pa. 171, 220 A.2d 628 (1966). The burden is one of preponderance on the Commonwealth to establish the voluntariness of the defendant's statements. Lego v. Twomey, 404 U.S. 477, 92 S.Ct. 619, 30 L.Ed.2d 618 (1972); Commonwealth V. Moore, 454 Pa. 337, 311 A.2d 620 (1973).

We now address the voluntariness of the statements given after the Miranda warnings by applying the "totality-of-circumstances" criteria to the facts at hand.

We address the statements separately. The first statement is that statement volunteered by the defendant to paramedic Snyder. At the time the statement was made, it was volunteered by the defendant in response to a routine question by paramedic Snyder. It was not solicited by the police.

Furthermore, although the police were present, there is nothing in the situation which would lead a reasonable man to believe that he was under arrest or in the custody of the police. The arrival of the police at the scene was due to a request made on his behalf by his mother and her husband, and the defendant's transport to the Hospital Center was voluntary on his part. The mere fact that police were present was not in any way indicative that the defendant was in their custody. Their presence could be explained by many things, including a desire to interview an important witness or a desire to protect a potential victim.

We conclude, therefore, that the statement

made to paramedic Snyder was not made while the defendant was in custody and, furthermore, that it was not made pursuant to interrogation by police officers.

The next statement made by the defendant was a statement given to Officer Zimmerman in the ambulance. Prior to this statement, Officer Zimmerman advised the defendant of his Miranda rights, following which the defendant indicated that he wished to answer questions. The defendant contends that the waiver of his Miranda rights was not voluntary because of his mental and physical state.

We conclude that his mental and physical state was such that he was conscious, alert, and oriented in three spheres. That being the situation, there is no reason to question the quality of his waiver. Furthermore, the Smith case, in summarizing the state of the law concerning the voluntariness of statements speaks to whether the statement is the result of coercive techniques on the part of the police, whether physical or psychological. The interview by Officer Zimmerman was brief, the interrogation routine, and the detention basically the result of circumstances created by the defendant. Clearly there was no physical threat to the defendant from the police inasmuch as the interview took place in the ambulance in the presence of paramedics. We firmly conclude that there was no physical or psychological coercion in the situation, nor in the questioning technique used by Officer Zimmerman.

There were also statements made to the nurses in the emergency room while the defendant was being treated. The police were not present, nor were any questions asked by hospital personnel upon the request of the police. Although the statements of the defendant were reported to the police upon their request, there is simply no issue of interrogation by the police, custodial or otherwise, with regard to the emergency room statements.

The final statement to be considered is that statement given by the defendant to Detective Stauffer.

The duration of the interrogation was relatively short, and the defendant volunteered incriminating statements early in the interrogation. The method of interrogation involved no coercion, threats or any other similar technique that would pressure the defendant and compromise his willingness to make a statement.

Although interviews in a hospital setting are "extremely suspect" according to the Commonwealth v. Perry, 475 Pa. 1, 379 A.2d 545 (1977), there are many instances where hospital interviews have been deemed appropriate. See Commonwealth v. Webb, 491 Pa. 329, 421 A.2d 161 (1980); Commonwealth v. McQuaid, 273 Pa.Super. 600, 417 A.2d 1210 (1980); Commonwealth v. Harm, 272 Pa.Super. 431, 416 A.2d 533 (1979); and Commonwealth v. Hunt, 263 Pa.Super. 504, 398 A.2d 690 (1979).

In the present case, Detective Stauffer conducted an interview of the defendant at the hospital room. Preliminarily, Detective Stauffer asked the defendant a few routine questions to establish his condition. The answers given by the defendant were later verified as correct (such as birthdate, social security number, etc.). Detective Stauffer testified that the witness understood what was happening and freely waived his right to remain silent.

It should also be noted that Detective Stauffer conferred with the defendant's doctor and inquired about his condition prior to the interview. The doctor, who had just done a post-operative check on the defendant, thought the defendant was capable of answering Detective Stauffer's questions. See Commonwealth v. Hunt, 263 Pa.Super. 504, 398 A.2d 690 (1979).

Throughout the questioning, the defendant seemed alert, attentive and showed a willingness to

make the statements. The defendant did not ask for a lawyer and indicated that he wanted to talk to the Detective after the Miranda warnings had been given. He also volunteered information that was not in response to questions asked by the officers.

Testimony of the officers reveals that there is no indication that the defendant was in debilitating pain, nor were there any pain-controlling drugs administered to the defendant until after the interview. Both the officers and the treating physician evaluated the defendant as being aware of the choices he was making, and we so conclude.

EVIDENCE

The defendant challenges the seizure of physical evidence from 120 North West Street.

The protections of the Fourth Amendment are aimed at preventing unreasonable searches and seizures. U.S. v. U.S. District Court , 407 U.S. 297, 92 S.Ct. 2125, 32 L.Ed.2d 752 (1972). Although all warrantless searches and seizures are per se and reasonable, Commonwealth v. Gabrielle , 269 Pa.Super. 338, 409 A.2d 1173 (1979). We find that the plain view exception to the need for a warrant announced in Coolidge v. New Hampshire, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed. 2d 564 (1971), applies to the facts at hand.

The case of Arizona v. Hicks , 480 U.S. 321 94 L.Ed.2d 347, 107 S.Ct. 1149, 55 U.S.L.W. 4258 (1987) discusses the standards to be used in determining whether the exception if applicable. The plain view doctrine contains three elements that must be met. Initially the police officer needs to be lawfully at the scene where the evidence is viewed. Secondly, the evidence viewed needs to be discovered unintentionally. Lastly, there needs to be probable cause to suspect the evidence is contraband. Arizona v. Hicks, supra . See also Commonwealth v. Person, 385 Pa.Super. 197, 560 A.2d 761 (1989); Texas v. Brown, 460 U.S. 730. 75 L.Ed.2d 502, 103 S.Ct. 1535 (1983); Commonwealth v. Chiesa , 329 Pa.Super. 401, 478 A.2d 850 (1984).

Applying these standards to the case at bar, we find that the police officers were lawfully at the scene investigating the dealth of Sean Brady. The police officers were called to the scene and were requested to enter the home by Mr. Ketner. As part of this investigation, they were justified in walking through the home and making sure it was secure. This included walking into every room, making sure that doors and windows were closed and that no other suspects or witnesses were present in the home.

The second part of the Arizona v. Hicks test requires that the evidence be discovered unintentionally. It is clear from the facts that the police officers were not searching the house for evidence, but rather securing the premises. Additionally, it should be noted that the search did not include the opening of drawers or closed containers.

The reasonableness of a security check is addressed in the case of U.S. v. Agapito, 620 F.2d 324 (CA2 NY 1980), cert. denied 449 U.S. 834, 101 S.Ct. 107, 66 L.Ed. 2d 40 (1980). After weighing the intrusion of the privacy right of the individual with the public interest, the court found that the public interest outweighed the private interest due to the fact that the delay in time involved in getting a warrant would allow time for evidence to be destroyed and endanger the safety of officers who might encounter accomplices within the building. See also Comm. v. Curry. 343 Pa.Super. 400, 494 A.2d 1146 (1985).

The case of Mincey v. Arizona, 437 U.S. 385, 57 L.Ed. 2d 290, 98 S.Ct. 2408 (1978) is also distinguishable from the case at bar. In Mincey, the police responded to a shooting. The officers enbtered the apartment and requested medical assistance. Within ten minutes of the call, homicide detectives arrived at the scene and began a warrantless search of the premises which lasted four days and involved a full-scale search and seizure. The U.S. Supreme Court determined that this

activity was a violation of the defendant's Fourth Amendment rights based on the fact that there were no "exigent circumstances" present to justify the search without a warrant.

In the present case there was an injured victim on the first floor of the house and a dead victim on the third floor. The police and emergency crew were summoned and no one was aware of the circumstances surrounding the injuries and death at this time. The police and emergency crew were summoned and no one was aware of the circumstances surrounding the injuries and death at this time. The police officers had a reasonable belief that others may be in the house that could destroy evidence or endanger the lives of the officers. The search was reasonably brief and was conducted within a short time span of the preceding events. Also, a search warrant was obtained at a later time. Based on these facts, a security check of the premises by the police officers was reasonable and did not violate the Fourth Amendment rights of the defendant.

The third requirement of Ariona v. Hicks mandates that there must be probable cause to suspect the evidence is contraband. There is no real issue raised by the defendant that the police did not have probable cause to believe that the items seized were contraband.

Because all three prongs of the plain view exception have been met in the present case, the court finds that the search and seizure of 120 North West Street was proper and that there was no violation of the defendant's Fourth Amendment rights.

CONCLUSION

Based on the above-stated findings of fact and conclusions of law, we find that none of the defendant's constitutional rights wsere violated. Therefore, the statements by the defendant and the evidence seized by the police are not subject to suppression.

IN THE COURT OF COMMON PLEAS
OF LEHIGH COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

Commonwealth of Pennsylvania	:	
	:	
vs.	:	No. 1128/1991
	:	
Scot A. Reinert,	:	
Defendant	:	

ORDER

NOW, this 15th day of November, 1994, upon consideration of the post-trial motions of the defendant, Scot A. Reinert, as well as the briefs and argument of counsel.

IT IS ORDERED that the post-trial motions are hereby DENIED AND DISMISSED for the reasons stated in the accompanying Opinion.

BY THE COURT:

_____
CAROL K. McGINLEY

_____
THOMAS A. WALLITSCH

IN THE COURT OF COMMON PLEAS
OF LEHIGH COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

Commonwealth of Pennsylvania	:	
	:	
vs.	:	No. 1128/1991
	:	
Scot A. Reinert,	:	
Defendant	:	

* * * * *

APPEARANCES:

Douglas Reichley, Assistant District Attorney
For the Commonwealth

Diane Dickson, Esquire, with her
Wallace C. Worth, Esquire
For the Defendant

* * * * *

OPINION

CAROL K. McGINLEY, J.

Before us are the post-trial motions of the defendant, who was convicted of first degree murder and sentenced to life imprisonment. The victim, the defendant's lover, was stabbed to death, and was discovered by police two days after the murder, when the defendant's stepfather called for help.

On Sunday afternoon, March 10, 1991, the Allentown Police Department received a call requesting

assistance from Charles Ketner, the stepfather of the defendant. The police responded to 120 North West Street, Allentown, Lehigh County, Pennsylvania.

Mr. Ketner allowed the police to enter the premises. The police found the defendant sitting on the living room floor with dried blood on his clothing and apparent injuries. No one else appeared to be on the first floor.

Emergency Medical Services were called and began treatment of defendant. The medical personnel assisted the defendant to the ambulance, at which point, unsolicited, the defendant told them, "I stabbed him with a butcher knife, then I did myself." EMT Snyder, who testified at trial, observed the defendant to be coherent and aware at the time the statement was made.

Two Allentown patrolmen accompanied the defendant on the ride to the hospital and administered Miranda warnings to the defendant. The defendant then voluntarily stated, "I stabbed him. I think I killed him."

After arriving at the hospital, the defendant spoke with two of the emergency room nurses about what had transpired at the house.

Meanwhile, as the defendant was being transported, admitted, and treated, the police secured the crime scene. The police found the victim's body on the third floor, next to the bed. He had been stabbed multiple times.

The police memorialized the scene and proceeded through the house. Numerous items were seized, including the murder weapon and items of clothing. All of the items seized during this initial search were in plain view. Subsequent searches were conducted pursuant to a search warrant.

At the hospital, the defendant had surgery to close his wounds. Following surgery, the defendant's doctor judged him to be in stable condition. At that point, the defendant was again given Miranda warnings by Detective Joseph Stauffer and Detective Glen Granitz of the Allentown Police Department. Preliminary questions were asked to determine that the defendant was coherent and understood the implication of his waiver of Miranda rights.

The defendant subsequently gave a statement to the detectives. He indicated that he had lived in an intimate

relationship with Sean Brady for five years. On their way back from New York City the previous Friday evening, they had an argument. Upon returning to their home, Sean went up to the third floor bedroom and the defendant stayed downstairs. At some point later that night, the defendant picked up a butcher knife, went upstairs, and stabbed Sean. The defendant could not recall how many times he had stabbed Sean with the butcher knife.

Testimony revealed that after stabbing Sean, the defendant left the bedroom and locked himself in the downstairs bathroom. There he cut his wrists and stabbed himself in the abdomen in an apparent suicide attempt. The defendant then drifted in and out of consciousness for a period of time. At some point, he exited the bathroom, wrapped his cuts and left the house. He went to a drugstore, where he purchased sleeping pills, and returned home. The defendant took some or all of the pills he bought and remained in the home with the victim's body still upstairs.

The defendant's mother called the house on Sunday and spoke with her son. Worried by the tone of his voice Mrs. Ketner went to the house with her husband. Upon arriving, the Ketners called the police.

On or about March 10, 1991, the defendant was arrested and charged with criminal homicide. A suppression hearing was held on august 20 and 21, 1991, which motions were disposed of by Order and Opinion on September 13, 1991.

The evidence against the defendant at trial consisted of, among other things, the butcher knife used to kill Sean Brady, the victim's t-shirt, the sheets on the bed where Sean was stabbed, photos of the crime scene, a videotape depicting the condition of the house and the body when police arrived, the statements made by the defendant, and the observations of witnesses.

After conviction and sentencing, the defendant filed post-trial motions, which were argued en banc April 3, 1993, and June 3, 1992.

There are twenty-three (23) issues before the court on defendant's post-trial motions. For the sake of clarity, some of the related issues will be discussed simultaneously.

I. Statements and Evidence

The defendant contends that the court erred in denying the defendant's motion to suppress all statements made by him, and in refusing to suppress all evidence seized from his home at 120 North West Street, Allentown, Lehigh County, Pennsylvania. For the reasons stated in the Order and accompanying Opinion dated September 13, 1993, we find that the statements and evidence were correctly admitted.

II. Prozac

The defendant also argues that the court erred in precluding any testimony referring to the prescription drug Prozac, which the victim was allegedly taking at the time of his death. The defense intended to introduce the fact that the victim was taking Prozac to show that it was one of the things the defendant and the victim were fighting about, as well a to demonstrate the defendant's concern for the victim.

When the proposed questions for voir dire were submitted, the Commonwealth filed a motion in limine to preclude all voir dire questions and testimony referring to Prozac. The court ruled that no questions or testimony would be permitted concerning Prozac absent expert testimony.

The defense contends that Prozac is analogous to alcohol, and as such, we should follow established case law with regard to the admissibility of testimony. With alcohol testimony as to what a specific percentage of alcohol in the blood indicates with regard to intoxication or the effect of a certain percentage of alcohol on the mental and physical capacities of a person must come from an expert witness. Commonwealth v. Guiliano , 274 Pa. Super. 427, 418 A.2d 476 (1980). However, a lay person can give an opinion as to intoxication from alcohol, which can be drawn from observations of the person's demeanor and appearance. Commonwealth v. Reynolds, 256 Pa. Super. 259, 389 A.2d 1113 (1978).

While the defense urges we take this position, we cannot accept the proposition that Prozac is the same as alcohol. First, a layperson can testify as to intoxication because of the widespread use of alcohol in our society. That prevalence qualifies a lay person to render an opinion

on the subject. The same can not be said of the controversial drug Prozac. Not only is the use of Prozac not as common as the use of alcohol, but there is uncertainty and debate as to its effects. (For some discussion regarding the controversy over Prozac see Church of Scientology International v. Eli Lilly & Co., 778 F. Supp. 661 (1991) and the articles discussed therein). Without any expert testimony, the jury would be left to speculate about Prozac and its impact. (Other jurisdictions, while not ruling specifically on whether an expert is required to testify on the effects of Prozac, have had several cases where Prozac was involved and an expert testified; Boswell v. State, 610 So.2d 670 (1992); Garza v. State, 829 S.W.2d 291 (1992)).

Additionally, the defense was certainly permitted at trial to establish the defendant's concern for Sean Brady through other means. The court allowed unlimited testimony about the victim's behavior, provided that the defendant did not speculate before the jury that the victim's alleged troublesome behavior was caused by Prozac. Moreover, Prozac was not the only point of contention between the victim and Sean and was not the sole reason for the breakdown of their relationship. Therefore, the issue of Prozac was not relevant to the case, nor would it serve to do anything other than distract the jury and lead to speculation. Any probative value of the testimony regarding Prozac, without the aid of expert testimony, was outweighed by the potential for prejudicial impact.

III. "Life-Qualification" Questions During Voir Dire

The defendant objects to the Commonwealth's questions during voir dire concerning "life-qualification." The questions were: (1) "If the defendant is convicted of murder in the first degree, the sentence to be imposed would be life imprisonment. Do you have any preconceived opinions about someone receiving a sentence of life imprisonment?" and (2) "Do you believe your feelings or opinions about a sentence of life imprisonment would allow you to sit fairly and impartially as a juror if the Commonwealth proved the Defendant was guilty of murder in the first degree?"

We start by noting that the scope of voir dire rests in the sound discretion of the trial judge. Commonwealth v. Sparrow, 471 Pa. 490, 370 A.2d 712 (1977) (overruled on

different grounds by Commonwealth v. Tarver, 493 Pa. 320, 426 A.2d 569 (1981)). The decision of the trial judge will not be reversed unless palpable error is established. Sparrow, 370 A.2d 712.

Case law has established that it is within the realm of permitted questioning to ask during voir dire whether a potential juror has any predisposition towards returning a verdict that may result in life imprisonment. Commonwealth v. Kingsley, 480 Pa. 560, 391 A.2d 1027 (1978); Commonwealth v. White, 366 Pa. Super. 538, 531 A.2d 806 (1987); Commonwealth v. Haynes, 395 Pa. Super. 322, 577 A.2d 564 (1990). alloc. denied, 589 A.2d 689 (1990). This line of questioning is consistent with the purpose of voir dire, which is to provide the accused with a competent, impartial and unprejudiced jury. Commonwealth v. Hathaway, 347 Pa. Super. 134, 500 A.2d 443 (1985).

The questions asked by the Commonwealth in this case are permissible. The contention of the defendant that the phrase "without parole" should have been added to the questions has no basis. As the court pointed out at the time defense counsel objected to the life-qualifying questions, "without parole" is not an element of the crime, but rather a modifier. 18 P.S.C. §1102; See N.T. 1/15/92, p. 3. Furthermore, defense counsel offers no authority to support its contention that the questions were improper without that modifier.

IV. Venirepersons 15, 32, 42

The defendant challenges the court's ruling concerning three potential jurors. Venireperson 15 was stricken for cause, Venireperson 32 was stricken for cause, and the Court declined to strike Venireperson 42 for cause.

The transcript as to Venireperson 15 Roger Hahn is unclear as to who even challenged him for cause. However, it was established that Mr. Hahn was related to a police officer and this indicates that there was sufficient basis to strike him for cause. (N.T. 1/15/92, p. 4).

With regard to Venireperson 32, Michael D'Alessandro, the record is quite clear as to the court's basis for striking him for cause. Mr. D'Alessandro's father has a case pending in Lehigh County and his son was a witness for him. The litigant was being represented by Worth Law

Offices, who represented the defendant in this case. (N.T. 1/15/92, p. 3-8).

Venireperson 42, John Heiney, was not stricken for cause. Defense counsel requested that he be stricken because he had worked at the same place as Detective Granitz' father. However, he had not known the detective's father well, nor had he seen him in two years. (N.T. 1/15/92, p. 2). More importantly, Mr. Heiney did not know Detective Granitz at all. (N.T. 1/15/92, p. 2). There is nothing to indicate that Mr. Heiney would be unable to render a fair and impartial decision in this case.

V. Photos, Clothes, and Videotape

a. Photos

The defendant contends that the Court erred in allowing the Commonwealth to introduce four photographs (Commonwealth Exhibits 42-45). The black and white pictures depicted the victim's body from various angles.

In making this determination, the Court first had to decide if the pictures had inflammatory characteristics. Commonwealth v. Hudson, 489 Pa. 620, 414 A.2d 1183 (1980). To be inflammatory, "the depiction must be of such a gruesome nature or be cast in such an unfair light as to cloud an objective assessment of the guilt or innocence of the defendant." Commonwealth v. Hubbard, 472 Pa. 259, 281, 372 A.2d 687, 697 (1977). Having blood visible in a picture does not make it inflammatory per see. Hudson 414 A.2d at 1381.

If the pictures are not deemed inflammatory, the photos are admissible, subject to a determination of relevance and whether they can assist the jury. Commonwealth v. Gilman, 285 Pa. 145, 401 A.2d 335 (1979). If inflammatory, the pictures are admissible if they are "of such essential evidentiary value that [its] need clearly outweighs the likelihood of inflaming the minds and passions of the jurors." Commonwealth v. McCutchen, 499 Pa. 597, 602, 454 A.2d 547, 549 (1982).

The black and white photographs in the case at bar are not inflammatory. (See also N.T. 1/16/92, p. 83). They are similar in nature to those that were permitted in Commonwealth v. Reed, 400 Pa. Super. 207, 583 A.2d 459 (1990), alloc. denied, 598 A.2d 282 (1990), where the

pictures depicted cleaned bullet wounds, including one to the victim's face. Not only were the pictures not deemed inflammatory in that case, but the Court found the pictures depicting the location of the victim's wounds were relevant to support the inference of a specific intent to kill. Reed, 583 A.2d at 466. The Court distinguished the photos before them from the ones in Commonwealth v. Scaramuzzino, 455 Pa. 378, 317 A.2d 225 (1974). Those pictures were in color and showed the victim's heart removed from his body, as well as a nude torso covered with dried blood and glass rods sticking out to show the direction of the various wounds.

The photographs in this case were relevant, particularly in regards to the determination of specific intent necessary for a finding of first degree murder.

b. Clothes

The defendant also contends in his post-trial motions that Sean Brady's short should not have been introduced into evidence. The same principles that govern photographs are applicable to a determination of admissibility of a victim's clothing. Commonwealth v. Martinez, 475 Pa. 331, 380 A.2d 747 (1977). We find that the shirt in question was not inflammatory and was relevant and, therefore, admissible.

c. Videotape

The defendant raises a error that the court allowed the Commonwealth to show to the jury a videotape of the murder scene. The videotape was of the residence of the victim and the defendant at 120 N. West Street and was taken within hours of arrival of the police to the crime scene.

Show in the video was the scene from the front door, followed by the living room area where the defendant was found by the police, then the dining room, the kitchen and the remainder of the first floor. The tape then shows the stairway, the two bedrooms on the second floor, the bathroom, and concludes with the third floor bedroom where the victim's body was found, and the body in the room.

After viewing the tape before trial, in the presence of defense counsel and the Assistant District Attorney, the court specifically made a finding that the video was not inflammatory and that the evidentiary value of the tape

outweighed any potential prejudice. (N.T. 1/16/92, p. 83). Additionally, the court gave a limiting instruction to the jury prior to the showing of the video at trial and indicated that the tape was "not to inflame them", but to assist them. (N.T. 1/21/92, p. 101).

The tape was relevant in conveying to the jury the layout of the house and the condition in which it was found. Furthermore, it assisted the jury in following the defendant's later testimony as to the prolonged sequence of events he described from the stabbing of Sean until the police arrived.

VI. The Testimony of Nurse as Expert

The defendant alleges that the Court erred in permitting the testimony of Thomas Gavigan, a registered nurse, who participated in the care of the defendant upon his arrival at the hospital. The Court permitted Nurse Gavigan to testify as an expert and render an opinion as to whether certain stab wounds of the defendant were self-inflicted.

The standard for qualification of an expert is liberal in Pennsylvania. If a witness "has any reasonable pretension to specialized knowledge on the subject matter under investigation he may testify and the weight to be given to his evidence is for the [fact-finder]." Commonwealth v. Gonzalez, 519 Pa. 116, 546 A.2d 26 (1988), (citing Kuisis v. Baldwin-Lima-Hamilton Corp., 457 Pa. 321, 319 A.2d 914 (1974) and Moodie v. Westinghouse Electric Corp., 367 Pa. 493, 80 A.2d 734 (1951)). Furthermore, expertise in a particular field may be based on practical, occupational, or other experimental training and does not need to be obtained purely through academic training. Commonwealth v. Ellis, 354 Pa. Super. 11, 510 A.2d 1253 (1986).

Nurse Gavigan graduated college in 1983 with an associate's degree in Nursing. (N.T. 1/17/92, p. 195). He had worked in a hospital in New York for two years prior to coming to Lehigh Valley Hospital Center. After working at the hospital for a year, he moved to the emergency room, where he was stationed for more than six years prior to the trial. (N.T. 1/17/92, p. 178). In addition to the trauma training received at the hospital, Nurse Gavigan had actually treated approximately one hundred patients with stab wounds.

(N.T. 1/17/92, p. 179, 185). About half of the patients he treated had self-inflicted wounds. (N.T. 1/17/92, p. 192).

Based on these qualifications, Nurse Gavigan was qualified as an expert. He was then permitted to testify, based on his first-hand observations, that the location and depth of the wounds on Scot Reinert indicated they were self-inflicted. (N.T. 1/17/92, p. 200-202.).

In light of the formal training of Nurse Gavigan, as well as his extensive practical experience, the trial court did not abuse its discretion in permitting him as an expert.

VII. Commonwealth Witness; Reference to Lehigh County Prison

The defendant also claims the trial court erred in not granting a mistrial after Dr. Isadore Mihalikas, a forensic pathologist, briefly mentioned the fact that the defendant had been incarcerated. It was the only mention of incarceration made at trial and there is no indication that the remark was deliberate and intended on the part of the Commonwealth.

Dr. Mihalikas was asked to identify Commonwealth Exhibit No. 105 and responded, "This is a consultative letter which I sent to you March 29, 1991, after I examined Mr. Reinert at the Lehigh County Prison, in conjunction with ..." (N.T. 1/23/92, p. 40). An objection was made by defense counsel and sustained by the court.

At side bar, the defense moved for a mistrial, which the court denied. The court stated it would give a curative instruction to the jury, if defense counsel wanted one. Defense counsel refused, despite the Court's admonition that "counsel would be waiving any opportunity to ask for a mistrial." (N.T. 1/23/92, p. 42).

A curative instruction would have been an appropriate remedy, however, the defense counsel chose for tactical reasons not to have the court give such an instruction. In refusing the curative instruction, counsel may not now claim prejudice. Commonwealth v. Miller, 333 Pa. Super. 63, 481 A.2d 1221 (1984), (citing Commonwealth vs. Quartman, 253 Pa. Super. 460, 385 A.2d 429 (1978)).

VIII. Defense Counsel's Notes Containing Witness Statements from Pre-Trial Interviews

The defendant alleges the court erred in requiring

defense counsel to turn over counsel's notes made during witness interviews in preparation for trial.

On the sixth day of trial, the Commonwealth presented a motion to the court for the purpose of obtaining certain written notes made by defense counsel during pre-trial interviews with witnesses. After careful consideration and review, the court ordered defense counsel to turn over the notes in question, but limited the discovery to statements made by the witnesses, so as not to include the thoughts or opinions of counsel. The admissibility of the statements was to be determined on a witness by witness basis, with the requirement that the notes be adopted by the witness during the Commonwealth's cross examination of that particular witness. (N.T. 1/24/92, p. 98; 1/27/92, p. 3, 9, 10, 79).

The defendant contends these notes are protected as the work product of the attorney and under the attorney privilege. The defendant therefore asserts that it was improper for the court to order the notes be produced for the prosecution.

An attorney's work product has a qualified privilege against disclosure. Pa.R.Crim.P. 305(G) (definition of work product). The work product privilege does not extend to "information which an attorney secures from a witness while acting for his client in anticipation of litigation." Hickman v. Taylor, 329 U.S. 495, 508, 67 S.Ct. 385, 392 (1947).

In Pennsylvania, it is established caselaw that where the Commonwealth has pretrial statements of witnesses that have been reduced to writing, the Commonwealth must turn these notes over to the defendant's attorney upon request. Commonwealth v. Gartner, 475 Pa. 512, 381 A.2d 114 (1977). This principle was extended to notes in the possession of defense counsel in Commonwealth v. Brinkley, 505 Pa. 442, 480 A.2d 980 (1984).

In Brinkley, the defense attorney possessed pretrial statements of witnesses which the Commonwealth sought to have disclosed. Defense counsel argued that he was not compelled to release them to the Commonwealth because (1) the notes were covered by the work product privilege and (2) they were notes of his own recollection, not

verbatim or substantially verbatim statements. The court granted the motion of the Commonwealth, subject to the limitation that only actual statements from the witness need to be disclosed, not anything else that may appear within the notes.

In light of Brinkley, the trial court did not err in ordering defense counsel to turn over notes from pre-trial interviews with witnesses to the Commonwealth.

IX. Emergency Call

The defendant also contends that a tape of the 911 call made by Charles Ketner should have been admitted and played for the jury. The call was made from the residence of the defendant and the victim after Mr. Ketner arrived at the scene. The defendant argues that these types of calls are admissible and that the tape of the call contains present sense impressions and excited utterances not testified to by the witness during direct and cross examination. There is no need for counsel to argue hearsay exceptions, inasmuch as there is no hearsay problem presented in this instance.

It is true that tapes of emergency calls are now admissible as evidence without the written consent of the speaker. See 18 Pa.S.C. §5717; Commonwealth v. McElhenny, 329 Pa. Super. 240, 478 A.2d 447 (1984).

However, while a piece of evidence may be admissible, whether that evidence is relevant or cumulative is always a concern as well. Here, the witness had testified to making the call and what was said over the phone. The only purpose in playing the tape would have been to convey Mr. Ketner's surprise and anxiety. There is nothing of relevance for the jury to glean from Mr. Ketner's belief and state of mind.

X. Rebuttal Issues

The defendant claims the court erred in permitting the rebuttal testimony of Detective Joseph Stauffer, Ann Marie Orr and Susan Niemkiewicz.

The admission or rejection of rebuttal evidence is within the sound discretion of the trial judge. Commonwealth v. Miller, 490 Pa. 456, 417 A.2d 128 (1980); Commonwealth v. Haddle, 271 Pa. Super. 418, 413 A.2d 735 (1979). Furthermore, the admission on rebuttal of testimony that

could have been offered during the case-in-chief is not reversible error. Commonwealth v. Libonati, 346 Pa. 504, 31 A.2d 95 (1943); Commonwealth v. Eackles, 286 Pa. Super. 146, 428 A.2d 614 (1981).

We first address the claim by the defendant that Detective Stauffer should not have been allowed to testify on rebuttal. During the trial, Mr. Ketner testified that a white handled knife was found at the murder scene. The defendant testified regarding hallucinations that he had after Sean had been stabbed. Detective Stauffer was recalled by the Commonwealth as a rebuttal witness to testify that (1) he did not see a white handled knife at the murder site, nor was a white handled knife mentioned in any witness interviews, (2) that some of what was contained in the defendant's statement to him were direct quotes, and (3) that the defendant made no hallucinatory remarks in his presence.

It was appropriate for the court to permit the detective to be recalled on rebuttal. A primary purpose of rebuttal testimony is to contradict evidence offered by the defendant or his witnesses. Commonwealth v. Hickman, 453 Pa. 427, 309 A.2d 564 (1973). Detective Stauffer testified that contrary to the testimony of the defendant's step-father, Charles Ketner, there was no white-handled knife recovered from the house and that he had not seen one when he conducted a search of the premises. Moreover, Mr. Ketner had not mentioned this knife in any interviews.

In addition to rebutting Mr. Ketner's testimony, Detective Stauffer was permitted to contradict the testimony of several of the defense witnesses, including the defendant, regarding the detective's interview with the defendant. Detective Stauffer explained that the defendant was not forced to give any particular answers during his hospital interview and relayed observations concerning the defendant's clarity and statements that were made. It is also notable that the detective testified that the defendant made no reference during the interview to a bizarre series of events at the home. On direct and during cross-examinaiton at trial, the defendant made reference to hallucinations he had at the house subsequent to the stabbing of the victim.

See N.T. 1/28/92, p. 118-152; N.T. 1/29/92, p. 36-45, 50-65).

The defendant also objects to the rebuttal testimony of Ann Marie Orr, who was a friend and co-worker of the victim. The rebuttal testimony of Ann Marie Orr was admitted by the court because it addressed the victim's frame of mind prior to his death, an issue raised multiple times by the defendant. The defendant claimed that the victim was both depressed and suicidal prior to his death and that the defendant was concerned for Sean's welfare.

Ann Marie Orr observed the actions and attitude of the victim to be in direct contradiction to those testified to by the defendant. Ann Marie Orr testified to the victim's positive attitude and that he was moving on with his life. (N.T. 1/29/92, p. 164).

As a final objection to the rebuttal witnesses offered by the Commonwealth, the defendant alleges the court erred in allowing the testimony of Susan Niemkiewicz. Ms. Niemkiewicz was working as a nurse at the Lehigh Valley Hospital Center on the morning of March 11, 1991, when the defendant was in the Shock Trauma Unit.

During cross examination, the defendant testified that he "never forgot" the strange sequence of events after Sean's death and that he did not recall saying anything to Nurse Neimkiewicz that indicated otherwise. (N.T. 1/29/92, p. 45). The Commonwealth called Ms. Niemkiewicz on rebuttal, and she testified that the defendant had told her on the morning of March 11, 1991, that he did not remember what had happened. Therefore, it was appropriate for the court to permit Susan Niemkiewicz to rebut the defendant's testimony.

XI. Closing Arguments

During closing argument, defense counsel objected to a statement made by the Assistant District Attorney and the objection was overruled by the court. In referring to the deceased victim, the Assistant District Attorney said, "This person has no opportunity to respond to any accusations against him. This person doesn't have the opportunity to come into court before you." (N.T. 1/30/92, p. 81-82). The defendant argues that it was impermissible for the Commonwealth to appeal to the passions of the jury and to

point out that the victim was unable to testify.

A prosecutor is entitled to reasonable latitude in presenting his or her case to the jury and must be free to present arguments with logical force and vigor. Commonwealth v. Smith, 490 Pa. 380, 416 A.2d 986 (1980). Moreover, "Comments by a prosecutor do not constitute reversible error unless the unavoidable effect of such comments would be to prejudice the jury, forming in their minds fixed bias and hostility toward the defendant so that they could not weigh the evidence objectively and render a true verdict." Commonwealth v. Yabor, 557 A.2d 724 (1988). The comments by the prosecutor in this case do not constitute reversible error under this standard.

XII. Jury Instructions

The defendant also contends the court erred in not instructing the jury verbatim on several of the defendant's requested points for charge.

Jury instructions in a criminal case must include an explanation of the principles of law that apply to that particular case. Commonwealth v. Hawkins, 295 Pa. Super. 429, 441 A.2d 1308 (1982). However, a trial judge is not required to accept the language of a requested instruction and is free to select his or her "own form of expression, so long as the issue is adequately, accurately and clearly presented to the jury for its consideration". Commonwealth v. O'Searo, 466 Pa. 224, 352 A.2d 30 (1976); Commonwealth v. Smith, 511 Pa. 343, 513 A.2d 1371 (1986), cert. denied, 480 U.S. 951, 107 S. Ct. 1617 (1986).

While the court in this case did not word the instructions to the jury exactly as the defendant wanted them read, the court gave clear instructions to the jury. the court fully explained reasonable doubt, as is required by case law. Commonwealth v. Young, 456 Pa. 102, 317 A.2d 258 (1974); (N.T. 1/30/92, p. 90-93_. The court also adequately instructed on two other areas contested by defense counsel: expert witness testimony and good character evidence of the defendant. (N.T. 1/30/92, p. 96-97; N.T. 1/30/92, p. 97-98).

The one instruction that the defendant raises in his post-trial motions which was not given to the jury was Standard Jury Instruction 9.508L. This instruction says that

a person is entitled to use less than deadly force to prevent what he believes to be a suicide attempt.

This instruction did not apply to the evidence in the case. Even if the defendant did believe the victim intended to commit suicide, the force that defense counsel argues that he used was "attempting to grab the knife away from Mr. Brady." (N.T. 1/29/92, p. 223). It would have been confusing to the jury to receive an instruction on "less-than-deadly force" in a case where the victim had been stabbed to death. The court was not obliged to instruct the jury that it is permissible to stab someone to death in order to prevent suicide, and the court correctly declined to give such an instruction.

The last argument of the defendant with regard to jury instructions is that the court erred in its instruction concerning the duty to retreat, since that instruction does not apply to this case. The instruction given was:

The defendant must have been free from fault in provoking or continuing the difficulty which led to his use of deadly force and the defendant must have violated no duty to retreat. A defendant is at fault in provoking a difficulty if he is the initial aggressor. As a general rule, a defendant has a duty to retreat before resorting to deadly force and self defense if he knows he can avoid the necessity of using such force with complete safety by retreating.

Taken as a whole and not in selective excerpts (as defense counsel has done), the instruction is correct and pertains directly to the evidence presented in this case.

XIII. Exhibits With the Jury

Specifically, the defendant objects to the following exhibits being sent out with the jury during deliberations: the videotape of the crime scene (Commonwealth exhibit 55), four photographs (Commonwealth exhibits 42-45), the report of EMT Snyder (Commonwealth exhibit 48), hospital records (Commonwealth exhibits 52-54), the report of the anesthesiologist (Commonwealth exhibit 67), the report of Dr. Murphy (Commonwealth exhibit 68), the autopsy report (Commonwealth exhibit 102), a doctor's letter regarding the defendant's wounds (Commonwealth exhibit 105), a medication chart for the defendant during his hospitalization

(Commonwealth exhibit 107), and the report of Nurse Niemkiewicz (Commonwealth Exhibit 115). All of these exhibits had previously been entered into evidence.

Pennsylvania Rule of Criminal Procedure 1114 states "upon retiring for deliberations, a jury shall not be permitted to have a transcript of any trial testimony, nor a copy of any written confession by the defendant, nor a copy of the Information or Indictment. Otherwise, upon retiring, the jury may take with it such exhibits as the trial judge deems proper." None of the above-listed exhibits are excluded by this rule. Furthermore, case law has not rendered any of the exhibits improper per see to go back with the jury. Commonwealth v. Kingsley, 480 Pa. 560, 391 A.2d 1027 (1978); Commonwealth v. Brueckner , 458 Pa. 39, 326 A.2d 403 (1974).

Decisions concerning what exhibits may be permitted to go with the jury into the deliberation room are within the sound discretion of the trial judge and will not be reversed absent an abuse of discretion. Commonwealth v. Lybrand , 272 Pa. Super. 475, 416 A.2d 555 (1979). In this case, there is no basis to find an abuse of discretion and all of the items were properly allowed in with the jury.

For all of these reasons, we deny the post-trial motions of the defendant.

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA, Respondent,	:	No. 286 M.D. Alloc. Dkt. 1996
v.	:	Petition for Allowance of Appeal from the Order and Memorandum Opinion of the Superior Court
SCOT A. REINERT, Petitioner.	:	

ORDER

PER CURIAM

AND NOW this 26th day of September, 1996, the Petition for Allowance of Appeal is DENIED.

TRUE & CORRECT COPY

ATTEST: SEP 27 1996

JOAN L. STEHULAK, ESQUIRE
DEPUTY PROTHONOTARY

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA, Respondent,	: No. 286 M.D. Alloc. : Dkt. 1996
v.	: Application for : Reconsideration of : September 26, 1996 Denial : of Petition for Allowance : of Appeal
SCOT A. REINERT, Petitioner.	:

ORDER

PER CURIAM

AND NOW, this 11th day of December, 1996, the Application for Reconsideration is DENIED.

TRUE & CORRECT COPY

ATTEST: DEC 12 1996

JOAN L. STEHULAK, ESQUIRE
DEPUTY PROTHONOTARY

AFFIDAVIT

DATE: MAY 12, 1995

RE: COMMONWEALTH OF PA VS. SCOT REINERT

I, Lynn Alison Bornfriend, M.D., do hereby swear and affirm to the following information:

Upon receipt of the documentation regarding Mr. Reinert, I have spent several hours reviewing information, including the medical records of his in-patient stay at the Lehigh Valley Medical Center on March 10, 1991 through March 15, 1991, and the transcript of the Suppression hearing #1128/91 dated August 20 and 21, 1991. I have also conducted an initial literature search regarding the controversy around the use of Prozac, as it was viewed back in 1991. There are several areas I would like to address.

The most important issue is whether Mr. Reinert was in good enough shape medically and psychiatrically to knowingly and intelligently waive his Miranda Rights. I think not. The question of his being in hemodynamic shock was initially raised by the EMT who listed this as a diagnosis for Mr. Reinert. Early in his stay in the emergency room, there are several nursing recordings describing him as confused. In addition, there is significant lab evidence of dehydration, blood loss, liver damage and an increased white blood count. These are physical manifestations of shock. Mr. Reinert also had severe knife wounds, including cut wrists and protruding abdominal organs.

A review of Mr. Reinert's described mental status indicates emotional shock. At the time Mr. Reinert was discovered by his parents in his house, he had been in the house with a corpse for two days. In spite of this, he reportedly asked the police officer if "Sean was okay", indicating his confusion. Police officers also reported that he

was unable to recognize what day of the week it was. Despite his first being attended to in the house, his walking to the ambulance and the initiation of treatment in the ambulance, at no time did Mr. Reinert make the EMTs aware of several abdominal wounds, including a wound extruding the small bowel and mesentery. His wounds were discovered incidentally as the paramedics checked his vital signs. Only someone significantly disoriented would be so dissociated from his cognitive processes as to fail to bring these serious wounds to the attention of medical personnel.

Mr. Reinert had made very serious suicide attempts, cutting his wrists bilaterally multiple times prior to being found by his parents. The police report describes the officer finding "blood in nearly every room of the house, a lot of blood". Operating room reports indicate a lot of tendon damage. Information also revealed that Mr. Reinert had fallen down the stairs and injured his ankle and that he consumed a number of sleeping pills and a quantity of red wind (sic.) with the intention of killing himself. The above behaviors reflect an impaired judgement and ability to reason.

Mr. Reinert was in the Operating Room for laparotomy and tendon repair until around 4:00 in the afternoon. During surgery, he was given many anesthetics, including Fentanyl, a synthetic narcotic and Robinal, a sedative and muscle relaxant. Without the above medications, any patient would be in severe pain after such extensive surgery. It was, therefore, clear that the narcotic and sedative and muscle relaxant effects of these medications persisted and remained during the course of Mr. Reinert's being interviewed by the police and that when these medications wore off, Mr. Reinert was in severe pain and required 4 mgs. of morphine. In addition, the fact that a physician told police officers that Mr. Reinert's health would not be threatened by their questioning him does not imply that he was cognitively and mentally clear enough for them to do so.

Mr. Reinert's mother vividly described dissociative,

paranoid and delusional thought patterns, which would severely compromise Mr. Reinert's ability to intelligently waive his Constitutional Rights. She stated, "he said there were all kinds of people running through the house, people sort of like the KKK, "People were chasing me". He also said that, "they marked my house, they hung a flag out front to mark my house". He mentioned something about a body, and I said, "what do you mean body", he said, "you know". Then he said one time there was a body and I looked again and there wasn't a body, so I guess there never really was a body". She also said, "it was like he was there, but he wasn't there. It's a weird way to put it, but you know, like physically he was there and he kind of knew me, but yet like his presence really wasn't there."

Pastor Ronald Keller and Mr. Reinert's best friend, Cindy Mellinger, both testified that he appeared disoriented, medicated and sedated during the time he was in the Shock Trauma Unit. It was during that time that the police took his statement. His ability to state his name and other basic facts does not imply his ability to reason. Even a paranoid schizophrenic maybe oriented to three spheres, but still be unable to cognitively understand and rationally waive Miranda Rights. Any statements made in the ambulance cannot be considered voluntary, because of his medical and psychiatric condition, and the severity of the medical and psychological stressors in this case leads me to believe with a reasonable degree of medical certainty that Mr. Reinert was capable of knowingly and intelligently waiving his Miranda Rights.

I would also like to address the issues concerning the drug Prozac.

Prozac has been the focus of a tremendous amount of controversy in both the medical and lay communities. In March 1990, Newsweek magazine did a cover story describing Prozac as a "wonder drug". The same article, however, quoted Dr. Martin H. Tiecher of Harvard Medical School as stating that he had several patients who had had "intense, violent, suicidal, pre-occupations after 2-7 weeks

of fluoxtine therapy". The Church of Scientology labeled Prozac a "killer drug", stating it drove people to murder and suicide. Various anti-Prozac groups disseminated their message through many press releases, the talk show circuit, and by lobbying Congress and the FDA.

On February 27, 1991, Phil Donahue did a show titled, "Prozac: Medicine That Makes You Kill". Lawyers soon thereafter filed lawsuits against Eli Lily claiming that Prozac had forced people into suicidal or homicidal behaviors. These lawsuits themselves rendered further publicity to the concerns of the lay and medical communities. Lay people became even more distrustful of physicians recommending the use of this medication and this created disputes among family members. This undersigned physician also was faced with these concerns - - my father, an educated architect, upon hearing news commentaries, called to caution me against prescribing this "dangerous drug". It is, therefore, understandable why Mr. Reinert was reluctant and concerned of Mr. Brady's use of the medication. He reports that he had made constant complaints. There were frequent arguments and fights regarding Mr. Brady's continued use of Prozac. This is not unlike other families and many experts could have corroborated the above facts in 1991. It seems to me as a professional that it was necessary in order to completely understand what went on between the two parties and/or the basis of their arguments the night of the incident that information concerning Prozac should have been considered.

Patients being treated with Prozac, like the rest of us, are capable of acting differently in different social settings, and the statement by some of Mr. Brady's friends that he appeared stable psychologically does not negate the possibility of his behaviors being unstable around Mr. Reinert. Prozac is a long-acting medication with an extended half-life. The level of this medication builds up in the blood stream and some people report becoming agitated, aggressive, irritable and even manic after several months of its usage. An observance of such behavior will

lead a lay person to fear its recurrence. In addition, there is a vast quantity of psychiatric literature which explores the phenomenon of patients becoming more actively suicidal during the first several weeks of their treatment with antidepressant medication. This has something to do with the lessening of psychomotor retardation and a motivation. This supports Mr. Reinert's contention that Mr. Brady had been contemplating suicide the night he died. Therefore, Mr. Brady may have been agitated or contemplating suicide the night of the incident.

At the time of the incident and at the time of the Suppression Hearing and at the time of the trial, there were many medical experts easily attainable to testify to the effects of and issues surrounding Prozac as more fully explained below:

A. Prozac was a controversial drug with proponents and detractors in the lay and medical communities,

B. The use and discontinuation of Prozac by family members caused arguments and dissention, and

c. That patients on Prozac might, for varying reasons, become suicidal, aggressive or have affective lability and mood swings.

SIGNED

_____

Lynn Alison Bornfriend, M.D.

Sworn to and Subscribed
before me this 15th day
of May, 1995

SWORN

Florence R. Falance
Notary Public

LYNN ALISON BORNFRIEND, M.D.
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(609) 985-4204

August 22, 1995

Ted Simon, Esq.
1818 Market Street
35th Floor
Philadelphia, PA 19103

RE: SCOT REINERT

Dear Mr. Simon:

Be advised as per my letter of May 12, 1995, I would like to reiterate a few points.

The first issue is the effects of shock and blood loss on a person's ability to understand Miranda warnings. Throughout the medical records that I reviewed, there were multiple references to both emotional shock and physical shock. There is a long list of metabolic findings which indicated presence of several medical problems secondary to Mr. Reinert's wounds and blood loss. In addition, there is a tremendous amount of material which substantiates the facts that Mr. Reinert was dealing with dissociative paranoid and delusional thought patterns, which would severely compromise his ability to waive his Constitutional Rights. Therefore, as stated in my last letter, "the severity of the medical and psychological stressors in this case lead me to believe with a reasonable degree of medical certainty that Mr. Reinert was incapable of knowingly and intelligently waiving his Miranda Rights?. I, as well as others, were available at that time to testify on this issue.

FF

The second issue addressed in that letter involved the use of the psychotropic medication Prozac and the varied responses of patients, as well as the controversy among the professional and lay communities about it's use. This includes the fact that some people, after longer periods of time, can become excessively agitated, aggressive and irritable on Prozac, that some people when initially treated with psychotropic medications become better able to act on suicidal ideation and that there was a lot of controversy around the use of this medication, which often raised dissention among family members. I and other experts could, at that time, have testified to these many issues; and this was not a circumstance where one would have had to hunt for experts.

Should you wish to discuss this matter further, please do not hesitate to call me at (609) 985-4204.

Sincerely,

SIGNED

Lynn Alison Bornfriend, M.D.

ROBERT L. SADOFF, M.D.
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Jenkintown, Pennsylvania 19046

Telephone 215-887-6144
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May 4, 1995

Theodore Simon, Esquire
35th Floor
1818 Market Street
Philadelphia, PA 19103

RE: Scot Reinert

Dear Mr. Simon:

Pursuant to your request, I reviewed a number of records that you provided in the above captioned matter. These include the following:

1. Medical records from the Lehigh Valley Hospital Center in Allentown, Pa, where Scot Reinert was admitted on 3-10-91, with multiple stab wounds of the abdomen and multiple stab wounds bilateral wrists. He was seen then as a 23 year old white male who was brought to the emergency room at that time.

On the nursing assessment record, there is a note that Scot was seen with seven stab wounds around the umbilicus and that mother had called to arrange the hospitalization. she had noted that Scot sounded very confused and complained of foot pain. A psychiatry note on 3-13/91, indicated, "Mr. Reinert seemed better organized, clearer."

On the psychiatric consultation, dated 3-11-91, there is a note, "The patient tells me that he remembers essentially nothing of the events that led to his hospitalization here. He

tells me that the police have informed him that they suspect him of having murdered Shawn. He is quite surprised by this. The patient is very tearful at the loss of Shawn and seems to genuinely miss him. He states that he currently does have suicidal ideation, although he does not have a plan at this time." On mental status examination, he appeared alert, cooperative and quite sad. There is a note, "He seems quite bewildered by what's going on as well as frightened. There are no hallucinations. There do not appear to be delusions present at this time." the diagnosis would be psychogenic amnesia versus malingering and possible reactive psychosis. These were the diagnoses of Dr. Antonowicz, who suggested low dose Haldol in the event of agitation.

Other notes in the hospital records show that Scot was 27 during the hospitalization rather than 23. Discharge summary notes an admission date of 3-10-91 and discharge date of 3-15-91 and again refers to Scot as being 23 years of age rather than 27 as is noted elsewhere in the records.

2. The notes of testimony of the suppression and discovery hearing, dated 8-20 and 8-21-91. During that hearing, the police officers testified that Scot appeared to be in fairly alert, coherent shape, even though he had just been operated on and had some difficulty speaking, except in a very low voice. The doctors also indicated that they had given permission for the police to interview Scot shortly after his major surgery, where he had a general anesthetic. They had cleared him medically for the interrogation.

Also in the hearing was the testimony of Scot's parents, female friend and pastor. They all indicated that Scot appeared confused, was difficult to understand and was not in his usual state of clear thinking of communication.

My understanding of the events that occurred was that Scot had been in some type of altercation with Shawn, his roommate and lover, and that Shawn was stabbed several times. It was also noted that Scott had some wounds that may have been caused during the altercation

as well as wounds that were self-inflicted, both on the wrists and in the abdomen. The altercation apparently occurred about two days before the arrest. During that time, Scot apparently had tried to kill himself by the self-inflicted wounds and also by taking a sleeping medication. His mother testified that she called on the day of the arrest and found that Scot appeared confused and complained of foot pain and was going to the hospital. She drove over with her husband and found Scot sitting in the residence, with obvious cuts on his arms. They had not seen the lacerations or stab wounds of his abdomen. Scot was then taken to the hospital, where the wounds were found and was taken up to surgery, where he had abdominal surgery under general anesthetic. It was shortly after the recovery from the surgery that Scot was interviewed by the police.

It is my understanding that the issue here is whether Scot was competent to waive his Miranda rights and to give a voluntary statement at the time it was given in the hospital shortly after his operations.

In responding to this question, one must consider the totality of events that occurred to Scot at that time. First of all, he had been in an altercation with his lover and had learned that his lover had died. He also had inflicted wounds upon himself in a suicidal or self-destructive fashion, cutting his wrists and his abdomen, requiring abdominal surgery. He was in an emotional state of shock in the sense that he had lost a great quantity of blood as that had been described by the witnesses who were in the house and had seen a lot of blood all over the house. Scot had been given a solution to help with his low blood pressure and his fast heart rate, which are also signs of blood loss and early shock. Scot was then taken to the emergency room and had surgery performed under general anesthesia. One is usually in a fairly confused state of mind following surgery with general anesthesia, and is not thinking as clearly usually, as one does after several days. Scot had just been through a serious altercation with his lover, had lost his lover by death and had been in a state of shock himself following loss of large quantities of blood due

to self-inflicted and other wounds to his wrists and his abdomen. He appeared confused to his mother on the telephone and also when she visited him at his residence shortly thereafter. He also appeared less than clear to his mother, stepfather, pastor and female friend while in the hospital following surgery.

Thus, for all the reasons noted above, it is my opinion, within reasonable medical and psychiatric certainty, that at the time of the taking of the statement of Scot Reinert, he was not at his clearest thinking and was under the influence of the shock of the loss of his lover, the shock of his own wounds and recently emerging from general anesthesia with abdominal surgery that his will and strength and clarity of mind were all impaired. It is more likely than not that at the time he was interrogated by the police and given his Miranda rights, his emotional state was so impaired that he would not have been able to resist effectively the demands of the police at the time or the requests of the police. It would seem that his statement would not be totally voluntary as he may choose, when in a clearer state of mind, to resist giving such a statement, especially under the advice of his attorney, if he had been allowed to see his attorney prior to the interrogation.

The note of Dr. Antonowicz, the psychiatrist who examined him in consultation one day after he was admitted and then three days later, indicated a clearing of his sensorium on the second examination. This implies that his first examination showed Scot to be less than clear, and that was one day after his admission or one day after the interrogation.

It should be noted that medical clearance, i.e., that a person knows where he is, who he is and what time it is, what colors are and who people may be, is not the same as a person being in his full state of clarity of mind for a legal interrogation. They are two separate issues and have two separate degrees of competency. A person who is medically cleared means that he has a stability of his vital signs and can talk to people without undue jeopardy to his

medical condition. However, the degree of mental ability required to effectively resist the interrogation of skilled police officers is much higher than a minimal medical clearance. Scot indicated to Dr. Antonowicz that he had no memory of what happened and seemed surprised that he was being charged in the death of his friend, Shawn. That is clearly a different statement from the one that the police indicate they had taken from Scot earlier, while he was recovering from his surgical procedure. If the police had waited one or two days, until Scot had cleared in his mental sensorium following his emotional ordeals and his surgical procedure, they may have been told the same thing that Scot told to Dr. Antonowicz.

Thus, it is for all these reasons that it is my opinion, within reasonable medical certainty, that at the time of the taking of the statement by the police, Scot Reinert was in such a weakened state of emotional condition following the shock to his system from the death of his lover, the wounds that he had to his own body, the medication that he was under, the loss of blood, the surgical procedure under general anesthesia, that his mental state was not clear enough for him to be competent to waive his Miranda Warnings or to give a truly voluntary statement.

Yours very sincerely,

SIGNED

Robert L. Sadoff, M.D.

RLS:rb

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Telephone 215-887-6144
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August 21, 1995

Theodore Simon, Esquire
35th Floor
1818 Market Street
Philadelphia, PA 19103

RE: Scot Reinert

Dear Mr. Simon:

Please let this letter serve as an addendum to my letter to you, dated May 4, 1995. I have reviewed that letter and stand by the opinions given therein. If I were asked to testify either at a suppression hearing or at trial, I would testify to the opinions that I give in y letter to you of May 4, 1995.

Further, I can add, with respect to the concept of Prozac. It is my understanding that there was an argument between Scot and Shawn about Shawn's use of Prozac. It was my understanding that Scot was concerned about Shawn's use of Prozac as a number of lay people were concerned about others using Prozac several years ago. Prozac has become a very controversial medication - hailed by many as a boon to the depressed and cursed by others as having unusual side effects that may lead to suicide or violent behavior. There have been, to my understanding, a number of legal cases with respect to the effect of Prozac on behavior. It has been reported that patients taking Prozac can have a change of personality as well as a relief of depressive symptoms.

It is my opinion that at the time of the suppression hearing and at the time of trial, there were a number of experts, both on the use of Prozac and on the state of mind when giving a statement, that could have been available to testify if they had been called. We know that Prozac was a controversial drug at that time and that there were reports that the use of Prozac had been related to various changes in behavior, including irritability, aggressiveness, suicidal behavior and, on occasion, violent behavior. People were know to have mood swings and labile affect.

With all of that said, I still hold to the opinions that I gave in my letter, dated May 4, 1995, with respect to Scot Reinert.

Yours very sincerely,

SIGNED

Robert L. Sadoff, M.D.

RLS:ro

STATEMENT

I, Scot Reinert was the defendant in the matter of Commonwealth of Pennsylvania vs. Scot Reinert, in the County of Lehigh. I was charged with First Degree Murder in the death of Sean Brady.

The following are issues concerning problems with pre-trial and trial, that had direct adverse affect on my right to a fair trial.

1. I had requested on more than one occasion and desired of my defense Attorney's Dianne Dickson and Wallace Worth, to obtain expert witnesses for my defense.

Despite the fact that finances were available and constant requests made, my Attorney's failed to provide me with the desired experts.

2. My attorney's at no time informed me of my right to testify at my suppression hearing.

My testimony at that hearing would have supported the fact that certain evidence should not have been presented at my trial.

3. I discussed with my Attorney's that I would like a Medical Expert Witness, to testify at my suppression hearing.

The testimony of that witness would have supported the fact of the circumstances that due to: Severe blood loss, many wounds, shock of the incident, the amount of sleeping pills in my system, surgery and the shock attributed to surgery and more medication (morphine) administered in the hospital; that I was in no condition for police interrogation and certainly unable to understand, let alone waive my Miranda Rights.

It was also desired and asked of my attorney's to provide this Medical Expert Witness at trial to testify to my

condition at the time of my supposed reading of my Miranda Rights by the Allentown Police.

It is my belief then and now that testimony given by a Medical Expert would have supported my testimony, as well as others who testified for me, regarding my condition at the time of admittance to the hospital and my condition pre and post surgery.

4. The issue of Prozac was the antagonist between myself and Sean Brady during the last months and evening of the incident.

Due to our long friendship and living arrangement, we were both aware of the other's behavior and character. It was shortly after psychological medication was dispensed to Sean Brady, that I noticed a drastic change in his behavior and personality. At first I was not aware that he was taking the controversial drug Prozac. Though I had heard of the drug and read about it's side affects.

My concern deepened when my long time friend Sean, progressively became moody, violent in speech and nature, and at times suicidal. Expressing my concerns to him only made matters worse. I had become a first hand expert to the down side of Prozac.

During that time and since I have read many articles, watched many talk shows and talked to several people who have had negative side affects to the use of Prozac.

Sean was obsessed with Prozac, which led to a discussion I had with his doctor, who dispensed the drug to him like it was candy.

Sean Brady's behavior due to Prozac led to arguments between concerned friends and eventually to a terrible loss of one of them.

This issue should have been allowed to be heard during my trial by means of an expert witness as was

directed by the court. As the least I should have been able to express the facts of the case without being forced to suppress the most significant part of it.

Had my attorney's provided an expert witness to testify about the affects of Prozac, as they were asked to by me and told by the court. That testimony would have supported my own testimony regarding the severe psychological changes in Sean Brady. brought on by his use of the drug Prozac.

SIGNED

_____

SCOT REINERT

WITNESSED AND NOTARIZED BY:

SIGNED

_____

MARK CEMBROCK

THIS 11TH DAY OF MAY, 1996

AFFIDVAIT

Commonwealth of Pennsylvania :
:
: SS: Scot Reinert
:
County of Luzerne :

BEFORE ME, the undersigned authority, personally appeared SCOT REINERT, who being duly sworn according to law, deposes and says that he is the maker of the foregoing statement, and that the facts set forth therein are true and correct to the best of his knowledge, information and belief.

SIGNED
s/_____
AFFIANT

SWORN AND SUBSCRIBED TO,

BEFORE ME THIS 11TH DAY OF

MAY, 1995
SIGNED

_____
MARK CEMBROCK
NOTARY PUBLIC

AFFIDAVIT

I, Janet A. Ketner, of the address 1117 Schuylkill Mountain Road, Schuylkill Haven, Pa. 17972, mother of Scot Alan Reinert, who was convicted of first degree murder in the death of Sean Brady in the Lehigh County Courts, do attest and affirm the following:

1. On March 10, 1991 at 12:00 my husband Charles F. Ketner and I found Scot in his home at 120 N. West St. Allentown, Pa, in an injured and confused condition. Charles called 911 Scot was transported to the Lehigh Valley Hospital by ambulance. Charles, Cindy Mellinger, a friend of Scot's, and I were detained at Scot's house until about 4:00 P.M. by Detective Stauffer of the Allentown Police Department. We were not allowed to leave, use the bathroom facilities or telephone during this time.

2. We arrived at the hospital around 5:00 P.M. Initially hospital staff told us they weren't quite finished with Scot and they would come get us when they were finished. Soon after that, an Allentown police officer who was guarding Scot, told us we were not allowed to see Scot until Detective Stauffer talked to him. About 8:00 P.M., Charles, Pastor Keller, Cindy and I were allowed to visit Scot, with Attorney Wallace Worth and Attorney Dianne Dickson arriving about fifteen minutes later. We all observed Scot's weakened and disoriented condition at that time.. I later became aware that Mr. Worth stated that he could testify to Scot's condition, and that he felt that he was in no condition to give a statement, but to do this he would have to disqualify himself as Scot's Counsel. Attorney Worth did not follow through with this either.

3. Mr. Worth and Miss Dickson discussed the use of expert witnesses as to Scot's condition but never pursued that either. We had also informed Mr. Wallace and Miss Dickson of the name of a friend of Scot's, who knew a person in New York that could testify on the Prozac issue, but they didn't follow through with this either.

SIGNED

JANET A. KETNER

SWORN and SUBSCRIBED to
before me this 15th day
of May, A.D., 1995.

SIGNED
JANET M. GERST

AFFIDAVIT

I, Charles F. Ketner, of the address 1117 Schuylkill Mountain Road, Schuylkill Haven, Pa. 17972, stepfather of Scot Alan Reinert, who was convicted of first degree murder in the death of Sean Brady in the Lehigh County Courts, do attest and affirm the following:

1. Scot's mother, Janet A. Ketner and I found Scot in an injured and confused condition, at his home at 120 N. West St. Allentown, Pa, on March 10, 1991, at approximately 12:00 P.M. Shortly thereafter I called 911. They removed Scot by ambulance. We were detained at the house by Detective Stauffer of the Allentown Police Department, until about 4:00 P.M., without the use of bathroom facilities or the telephone, during this time.

2. We arrived at the Lehigh Valley Hospital at approximately 5:00 P.M. We were denied access to Scot at that time by an Allentown police officer, who was guarding Scot, who said we could not see him until Det. Stauffer got there. At approximately 8:00 P.M. we, Janet, Pastor Keller, Cindy Mellinger and I were allowed to see Scot who was extremely weak and disoriented. Several minutes later Attorney Wallace Worth and his associate Attorney Dianne Dickson arrived. Both Mr. Worth and Miss Dickson observed Scot's disorientation, and weakened condition. At some future time Mr. Worth stated that he could testify to Scot's condition, and disqualify himself as Scot's Counsel. Attorney Worth did not follow through with this course of action.

3. Mr. Worth and Miss Dickson, Mr. Worth's associate, had discussed the use of expert witnesses as to Scot's condition. We also conveyed the name of a friend of Scot's, who knew of a person in New York who could testify on the Prozac issue, to r. Worth and Miss Dickson. They did not follow through with this either.

SIGNED

CHARLES F. KETNER

SWORN and SUBSCRIBED to
before me this 15th day
of May, A.D., 1995.

SIGNED
JANET M. GERST

Commonwealth of Pennsylvania	:	
	:	No. 4349
	:	PHL 1994
vs.	:	Trial Docket No.
	:	1128 of 1991
	:	
Scot A. Reinert,	:	

AFFIDAVIT

I, Dianne M. Dickson, Esq., was primary trial counsel for the defendant, Scot A. Reinert, in the above captioned matter, in the County of Lehigh. Mr. Reinert was convicted for First Degree Murder.

1. My best recollection is that I did not inform Mr. Reinert of his right to testify at the Suppression Hearing.

2. I candidly must state that I did not call an expert medical or psychiatric witness at either the Suppression Hearing or trial to testify concerning Mr. Reinert's grave medical and psychological state, and there was no strategic basis for such failure.

3. Although I was provided with a resource to obtain an expert witness for trial regarding Prozac, I unfortunately did not follow through with that information, and no expert witness was called at trial. There was no strategic basis for such failure.

4. It is true that I visited Scot Reinert at the hospital the evening of Sunday, March 10, 1991, and I arrived immediately after the detectives finished taking Mr. Reinert's statement. I witnessed Mr. Reinert's condition at that time, and in my view he was completely "out of it"; he was not coherent, was in a great deal of pain, was not in a condition to make a statement, was not competent to make a statement, nor was he capable of understanding or knowingly and intelligently waiving his Miranda rights.

5. After being asked why I did not testify at either the Suppression Hearing or at trial concerning Mr. Reinert's condition on the evening he made the statements to the detectives, I can only say that I did not think to do so, and there was no strategic basis for such failure. In addition there is no strategic basis for not calling Officer Mertz at suppression, or renewing the Motion to Suppress at trial given his testimony, and, unfortunately, I failed to do so.

6. As to 1-5 above, I recognize that I erred with regard to these failures and Mr. Reinert and his case adversely suffered as a result.

SIGNED

_____

DIANNE M. DICKSON, ESQ.

WITNESSED AND NOTARIZED BY:

SIGNED

_____

CARRIE M. McNAIR

this 27th day of October, 1995.